

**Before the
Federal Communications Commission
Washington, D.C.**

In the matter of:

Application for Review by the
Cleveland Municipal School District
Of a decision of the Universal Service
Administrative Company

Federal State Joint Board on
Universal Service

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Universal Service Administrative Company Decision on Appeal Dated May 8, 2003

Letter of Appeal for Funding Commitment Denial for FY 2002

Form 471 Number: 321819

Funding Request Numbers: 857252, 856961, 857405

Form 471 Number: 323210

Funding Request Number: 865736

Form 471 Number 323152

Funding Request Numbers: 864964, 862588, 864400

Billed Entity Number: 129482

Applicant Name: Cleveland Municipal School District, f.k.a. Cleveland City School District

Application for Review

1. INTRODUCTION

The Cleveland Municipal School District, f.k.a. the Cleveland City School District, ("District", "CMSD") submitted to the SLD on May 8, 2003 eight letters of appeal (Attachments E, F, G, H, I, J, K, L) for three Form 471 applications with a total of nine funding requests. The District requests that the Federal Communications Commission ("FCC", "Commission") review the Universal Services Administrative Corporation (USAC) Schools and Libraries Division (SLD) Administrator's Decision regarding Funding Requests 864964, 862588, 864400, 865736, 857405, 856961, and 857252 in Form 471 Applications 321819, 323210, and 323152 for

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services in the Telecommunications and Internal Connections categories for funding year 2002-2003. The District contends that the Administrator improperly denied funding these requests, while granting others, despite clear evidence submitted by the District detailing the uniformity of the District's competitive bidding process as it applied to all funding requests.

The Administrator had clear direction from the FCC for processing funding denial appeals similar to those presented here and failed to follow that direction. Each FRN under appeal here is similar or identical to facts presented in FCC decisions in Ysleta¹ and Winston-Salem/Forsyth County.² In Ysleta, the FCC ordered the Administrator to allow re-bid contracts previously denied, where more than one vendor responded to the RFP. In Winston-Salem the FCC ordered that the Administrator process the application when only a single bidder responded to the RFP.

The SLD's original funding commitment decision letter stated bidding violations as the reason for all nine denials. The SLD Administrator's Decisions on the District's appeal letters, dated 12 April 2005 (nearly two years' time to decide), approved funding for two of the nine appeals, denying the other seven.

The seven (7) funding request appeals presented to the FCC have the same basis in fact and reasoning as the two approved by the SLD Administrator. Additionally, there is an odd circumstance related to the two approved appeals that cause the District to believe that the SLD Administrator may not have exercised the requisite due diligence in the review of the District's appeal letters. Since the Administrator approved two appeals, and since the District's other

¹ Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, CC Docket Nos. 96-45 and 97-21, FCC 03-313, rel. December 8, 2003 (Ysleta Order).

seven appeals are based on the same competitive bidding process approved by the SLD for FRN 857067 and 865118, the FCC must correct the Administrator's mistake and approve the funding request appeals in this letter as well.

The District presented consistent information throughout the process, from the Selective Review through the SLD appeal letters with attached documents. The information describes the District's process for selecting service providers. There are instances in the seven FRNs under appeal where only one qualified bidder responded, as occurred for one of the approved FRNs in the SLD appeal (FRN#865118 in application 323152). A vendor selected because no others submitted a bid, or because no others submitted a bid that conformed to specifications, must have submitted the lowest bid because there are no others (*see* Winston-Salem). The SLD Administrator was inconsistent and in error in its assumptions for denial. Furthermore, the Administrator had the requisite information to make the correct decision to approve the funding decision.

The FCC should note that Josephine Farkas of the SLD telephoned Ilze Lacis on 7 April 2005 with an urgent verbal request to provide information on how the service providers were selected for two FRNs that the District had appealed: FRN 865118 and FRN 857067 for network cabling (IBM) and long distance service (Qwest) respectively. The urgency was described as "...Washington wants to get this off their desk...". The request was for Ilze Lacis to respond via fax. The faxed response reprinted the key paragraph from the appeal submitted to the SLD nearly two years previously for each of the two FRNs. Interestingly, these two FRNs were approved, while others were denied.

² Request for Review of the Decision of the Universal Service Administrator by Winston-Salem/Forsyth County School District, CC Docket Nos. 96-45 and 97-21, FCC03-314, rel. December 8, 2003 (Winston-Salem Order).

This illustrates inconsistent and unpredictable decision-making on the part of the SLD Administrator regarding the District's appeals. The Administrator's Decision on Appeal letters state the SLD's reasoning for the initial review of the original Funding Commitment Decision Letter. Those same Appeal Decision letters scarcely reference, and do not cite directly, either the substantial arguments contained in the District's appeal letters of May 8, 2003, or the facts contained in the supporting documents filed with the appeal letters.

In the Administrator's Appeal Decision letter for Form 471 Application Number 321819 the SLD refers to the original decision made during review of the request (Attachment A, at page 4 and page 5): *"SLD's review of your funding requests determined that price was not the primary factor when you selected your service provider. Consequently, your appeal is denied."* At this point there is no reference to language in the appeal, nor to any of the attachments to the appeal. The Administrator continues: *"During the review process of your Form 471, the District was selected for an Item 25/Competitive Bidding Review. The District was asked to provide documentation that explained the vendor selection process. ...SLD thoroughly reviewed the documentation and determined that it was clear that price was not the primary factor in the vendor selection process. ... Therefore, the SLD properly determined that price was not the primary factor in the vendor selection process ... Review of the records and the information in your appeal letter, there is no evidence to support a reversal of the SLD decision."*

The Administrator states the same points in all three of its Decision letters. At no point in the letter referenced above, nor the other two Administrator's Decision on Appeal letters does the Administrator point to any specifics of any kind in any of the appeal letters the District

submitted to the SLD on May 8, 2003. However, there are lengthy paragraphs that refer to the original language upon which the SLD based its initial denial of funding. The only reference to the appeal letters and its attached documents is *"Your appeal does not provide evidence to support that price was the primary factor when you selected your service provider. Consequently, your appeal is denied."*

The District exerted care and research to provide the Administrator with ample information and documentation that the District did select the most cost effective, responsive and lowest priced service providers for the District's funding requests. The SLD Administrator's Appeal Decision letter has scant reference to, and no citation of, the substantial arguments with multiple supporting documents attached to the nine SLD appeal letters of May 8, 2003 that the District submitted to the SLD.

However, the two funding requests that the Administrator approved state (Attachment A at page2; Attachment C at page 2): *"...upon review of the supporting documentation provided during the selective appeal, it has been determined that the FRN was erroneously denied for price not being the primary factor. Your appeal has brought forward persuasive information that this portion of the appeal should be approved."* The seven denied appeals have the same "supporting documentation" noted in the above reference. The seven denied appeals have the same "persuasive information" that caused the Administrator to approve the two funding requests. It is obvious that the SLD Administrator has erred in its appeal decision.

Given the opposite conclusions, one must conclude the SLD Administrator did not review all the appeals thoroughly. The District contends that available evidence indicates the only

appeals receiving thorough review were the two appeals that were granted. If the SLD Administrator had reviewed all of the submitted documents, both for the initial review and especially for the appeal, there would have been no erroneous funding denials, nor the need to telephone the request described above that resulted in approving the two FRN appeals.

STATEMENT OF FACTS WITH DISCUSSION BY APPLICATION AND FRN

<u>Form 471 Application Numbers</u>	<u>321819</u>	<u>Telecommunications</u>
Funding Request Number (FRN)	857252	Arch Wireless Operating Company
a.		SPIN-143018525
	856961	Sprint Spectrum LP/Phillieco
b.		SPIN-143006742
	857405	Ameritech-Ohio
c.		SPIN-143001688
FCDL		March 10, 2003
USAC/SLD Administrator's Decision on Appeal Letter		April 12, 2005
Funding Year 2002		07/01/2002 – 06/30/2003
Funding Commitment Decision (originally)		Bidding Violation

Funding Request Number: 857252
SPIN SPIN-143018525
 Arch Wireless Operating Company
Services ordered: Telecommunications: Paging service

The District received two proposals in response to the paging service RFP. The two bids were less than one dollar (\$0.95) apart regarding price for a basic service. Arch Wireless Operating Company ("Arch") was the most responsive regarding the District's bid requirements and with the lowest cost overall. Materials and documents were provided to the SLD under the Selective Review Information Request for FY2002 including a complete set of the responding bids.

However, the Selective Review did not include specific questions regarding pricing, nor were followup questions asked regarding pricing by the Selective Review(ers).

The Administrator had the necessary information to ascertain that the District *did* select the most cost effective and lowest priced paging service that complied with the service requirement specifications posted on the RFP. The SLD Administrator's Decision on the Appeal for this funding request is in error. The District did not violate bidding or procurement regulations, neither those of the SLD, nor those of the State and the District. Therefore, the FCC must approve the funding request.

Funding Request Number: 856961
SPIN SPIN-143006742
Sprint Spectrum LP/Phillieco
Services ordered: Telecommunications: Cellular service

Three service providers responded to the District's Request for Proposal (RFP) for cellular service for eligible District users: AllTel, Cingular, and Sprint. AllTel's bid was the most expensive of the three responding bids, twenty dollars (\$20.00) more expensive than Sprint's service but for fewer users and with fewer features for the price. Cingular's pricing was based solely on Cingular-to-Cingular service. This was unresponsive to the requirements, since at that time there were District departments using cellular service from other providers. Therefore, Cingular's bid was non-responsive. The third bid was from Sprint, whose cost was the lowest per the required specifications, and thus the District selected Sprint as the service provider with the lowest cost.

Funding Request Number: 857405
SPIN SPIN- 143001688
Ameritech-Ohio (SBC)
Services ordered: Telecommunications: Measured Business telephone lines

There were three respondents to the Request for Proposal (RFP) for the Measured Business Line service: Warwick Communications, Inc., XO Communications and Ameritech/SBC. Warwick Communications, Inc., price was the highest due to reselling Ameritech/SBC telephone lines and thus eliminated as a competitor. XO Communications price appears, at first glance, to be \$4,452.00 less than the Ameritech proposal. However, XO's price does not include implementation charges, which must be included in the overall price. XO's total cost to the Erate program would be as high or higher than the Warwick's bid due to the non-recurring implementation costs. This would make the funding request to the SLD \$15,000 to \$20,000 more costly than the service provider the District selected: the Ameritech/SBC bid. The Ameritech bid does not require implementation charges and thus is the lowest priced service provider. The SBC/Ameritech bid reflects the complete price and clearly is the lowest one.

<u>Form 471 Application Number</u>	<u>323152</u>	<u>Internal Connections</u>
Funding Request Number (FRN)	864964	Media, Inc. dba WVIZ/PBS (digital wireless broadcast network) SPIN-143024681
	862588	IBM Corp. (technical support) SPIN-143005607
	864400	ComWeb Technology Group (ComWeb Teaching Tool) SPIN-143005079
FCDL		March 10, 2003
USAC/SLD Administrator's Decision on Appeal Letter		April 12, 2005
Funding Year 2002		07/01/2002 – 06/30/2003
Funding Commitment Decision (originally)		Bidding Violation

Because this Form 471 was submitted and reviewed in conjunction with the Form 471 for International Business Machines (IBM), (Form 471 number 323152), we must conclude the denials resulted from the Administrator's linking of all Cleveland applications for Funding Year 2002 with IBM. As such, the denials were executed on a pro-forma basis, irrespective of the facts presented by Cleveland during review or through appeal. Vendors for the three FRNs in this section were selected in accordance with state and local procurement law and price was the primary consideration. These denials should be overturned based on the facts presented here.

Funding Request Number: 864964
SPIN SPIN-143024681
 Media, Inc. dba WVIZ/PBS
Services ordered: Internal Connections: digital wireless broadcast network

The District posted a Request for Proposal for the funding year 2002-2003 for a Digital Wireless Broadcast Network. There was one respondent, and as such was the lowest bidder.

Pursuant to Winston-Salem, there can be no basis for the SLD's Administrator to conclude, even in the initial review, that there was any kind of bidding violation for this funding request.

Equally disturbing is that the Administrator states in the Appeal Decision letter:

Upon review of the supporting documentation provided during the selective appeal, it was determined that the FRN was erroneously denied for price not being the primary factor. However, the funding request includes services that are deemed ineligible per SLD program rules. Hence the funding is denied.

Firstly, the District appealed the denial based on the bidding violation point, not regarding ineligible services. The Administrator determined the SLD's error and then, rather than reversing that erroneous decision, changed the original denial's reasoning without communicating the change to the District. This decision is capricious, arbitrary and, by the SLD's own admission, mistaken. By adopting this procedure, the SLD denied the District any opportunity to present a reasonable appeal addressing the issue(s) at hand. Furthermore, this shows that the SLD's Administrator did not perform the requisite review initially, since the SLD reviewers should, at the very least, know the Erate program's own eligibility requirements.

It is unfair for the SLD to preempt the District's opportunity to respond to a denial of funding based upon entirely new rationale. The District's appeal to the FCC for FRN 864964 is based on the original denial for bidding violations and as such should be granted.

Funding Request Number: 862588
SPIN SPIN-143005607
IBM Corp.
Services ordered: Internal Connections

The District received four proposals in response to the basic maintenance and technical support RFP. Of the four, the ComWeb Technology Group, Inc.'s proposal was for support specifically limited to the company's proprietary product, which teachers use throughout the District's classrooms as a teaching aid and is appealed in the next section. Ross-Tek presented a bid that was so limited in scope of service that it completely failed to address the District's specifications. Thus, the District was obligated under local law to reject the Ross-Tek proposal as not responsive. Ameritech/SBC's proposal was incomplete and lacked pertinent details. The District asked Ameritech/SBC to provide the missing information, and even provided the vendor an opportunity to present its proposal to the District's reviewers in person as the District was interested to know the complete specifications due to the price. The vendor's response remained incomplete; Ameritech/SBC never provided the information and deliverables that the RFP required. Therefore, Ameritech/SBC presented a non-responsive bid.

The IBM technical support proposal was the only responsive bid and as such was the lowest priced bid. This is the same situation as for FRN 865118 that the SLD Administrator approved and for which the footnote below provides the wording of the faxed information that is referenced in the Introduction section to this appeal letter.³ The District received one, and only

³ *FRN #865118 was for the District's network cabling, or wiring, needs. The request for proposal asked for a complete, point-to-point service. Of the three respondents (Allied Cable, Ameritech, IBM) there was only one responding proposal that included clear specifications per the request. Thus, there was no comparative evaluation. Allied's response provided only cost per foot with few, if any, other specifications. This made the bid non-responsive, as it was impossible to determine the cost. Ameritech's proposal provided diverse pricing for*

one, responsive bid for the service referenced in FRN 862588 in this section. Based on the Administrator's decision to approve FRN 865118, there is only one option regarding FRN 862588 and that is to approve it.

Cleveland properly rejected bids from Ameritech/SBC and Ross-Tek under procurement law. As such, IBM was the only responsive bidder for this contract. In accordance with the Winston-Salem Order, the Administrator must accept the only responsive bid as the most cost effective. We note here that in the Winston-Salem Order the Commission found that Winston-Salem did not issue an RFP. Rather, they simply listed desired services on the FCC Form 470.⁴ Under Cleveland procurement regulations, for a contract of this monetary value, an RFP was required.

Funding Request Number: 864400
SPIN SPIN- 143005079
ComWeb Technology Group, Inc.
Services ordered: Internal Connections

ComWeb Technology Group, Inc. ("ComWeb") was the only respondent to this RFP. The District selected this vendor because it was found qualified to provide basic maintenance service for the product. Teachers use the tool as a teaching aid throughout the District's

various cabling categories, but gave no specific costs, making Ameritech's response incomplete per the request for proposal. IBM was the only responsive bid. It is a service the District needs, since we are currently in a 12-year District-wide rebuilding/renovating of instructional sites.

⁴ Winston-Salem at 14.

classrooms. The District acquired the Classroom Network Switch using E-Rate funds in Year 3 (Funding Year 2000-2001).

The District made no bidding violations in selecting ComWeb; it is the only qualified bidder. There is no basis for the SLD to conclude "that price was not the primary factor for selecting this service provider's proposal." Therefore, the FCC must approve the funding request appeal. The District's appeal to the SLD did demonstrate the aforesaid regarding the selection of ComWeb. The Commission should overturn this denial in accordance with the Winston-Salem decision.

<u>Form 471 Application Numbers</u>	<u>323210</u>	<u>Internal Connections</u>
Funding Request Number (FRN)	865736	IBM Corp
FCDL		SPIN-143005607
USAC/SLD Administrator's Decision on		March 10, 2003
Appeal Letter		April 12, 2005
Funding Year 2002		07/01/2002 – 06/30/2003
Funding Commitment Decision		Bidding Violation
(originally)		

Funding Request Number: 865736
SPIN SPIN-143005607
 IBM Corp
Services ordered: Internal Connections: Wireless LANs

Five bidders responded to the wireless LAN Request For Proposal: Apple Professional Services, Smart Solutions, Ameritech/SBC, IBM Corp, and Wireless Information Networks, Inc. Apple Professional Services, Inc. (Apple) was the lowest-priced bid. However, Apple's reliance upon proprietary equipment and Apple's lack of the required specifications along with

unclear deliverables relegated the bid as non-responsive to the RFP requirements. The District further notes that proprietary branding such as that proposed in the Apple bid results in “hidden costs” best avoided when possible. As the FCC mandates in its Orders, proprietary technology is not favored for Erate program funding. Therefore, the Apple bid, although on the surface the lowest, was determined to be non-responsive and not the lowest price, due to the proprietary products it required.

The Smart Solutions proposal and the Ameritech/SBC proposal were the next lowest priced bids, respectively. Both bids were incomplete regarding specifications, lacking cost details, excluding necessary implementation costs required for a functional wireless LAN that avoids “dead” transmission locations in the District’s instructional sites. The Smart Solutions and the Ameritech/SBC bids did not include all of the requirements specified in the RFP and therefore were not responsive. The Wireless Information Networks, Inc. bid was twice the cost of the IBM proposal. Thus, although it was responsive, the Wireless Information Networks proposal was eliminated as the highest priced bid.

This left only the IBM bid as the one that incorporated the RFP’s specifications, and was the lowest priced responsive bid for the RFP. The District, in accordance with state and local procurement regulations did properly find the other bidders non-responsive to this RFP. As such and in fact, IBM was the lowest qualified responder to this RFP. The Administrator improperly denied this FRN by requiring that Cleveland consider rejected bids that failed to conform to RFP specifications. The Administrator is expressly forbidden from interjecting itself in state or local procurement law. Rather, it is charged with implementation of

Commission regulations.⁵ The District complied with competitive bidding requirements stipulated in E-Rate regulations in addition to complying with state and local procurement law and regulation.

The Administrator made the wrong assumptions pertinent to any bid violation for this FRN, and the FCC must approve the funding request.

CONCLUSION

The District took special efforts to encourage vendor competition for the Request for Proposal (RFP) postings for E-rate Funding Year 2002-2003. The District contends that the Cleveland Municipal School District complied with the Schools and Libraries Division bidding requirements and clearly demonstrates that no bidding violations occurred for any of the funding request appeals presented herein. The District has demonstrated in this appeal letter to the FCC that it selected the lowest responsive bid in each case appealed herein. The District is presumed, by following appropriate local statutes, policies, and regulations, to have selected the most cost-effective service provider. Ohio statutes and District policy and regulations formulated under the State's statutes require District administrators to consider price as a primary factor in the award of contracts for goods and services.

The FCC, upon full review of the attached documentation, must approve these appeals.

⁵ See Title 47, Section 54.504(a): These competitive bid requirements apply in addition to state and local competitive bid requirements and are not intended to preempt such state or local requirements.

Respectfully submitted,



Ilze K. Lacis
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Attachments: Appeals submitted to the SLD follow below.

Attachment to FCC Appeal

For

Forms 471

321819

323210

323152

Note:

These are the appeals with their attendant attachments
originally submitted to the
Schools and Libraries Division of USAC

Department of Research & Information

4966 Woodland Avenue, Cleveland, Ohio 44104 • 216-432-6240 • Fax 216-432-4632 • www.cmsdnet.net

SLD Funding Denials/FY 2002-2003

8 May 2003

TO: Letter of Appeal
Schools and Libraries Division
Universal Services Administrative Corporation
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

RE: Letter of Appeal for Two Funding Commitment Denials for FY 2002

Billed Entity Number	129482	Cleveland City School District
Form 471 Application Number	321819	
Funding Request Number	857252	Paging Service
Services Ordered	Internal Connections	
Pre-Discount Amount	\$102,841.20	
SPIN	143018525	Arch Wireless Operating Company
FCDL	March 10, 2003	
Funding Year 2002	07/01/2002 – 06/30/2003	
Funding Commitment Decision	Bidding Violation: Documentation provided demonstrates that price was not the primary factor in selecting this service provider's proposal.	

Billed Entity Number	129482	Cleveland City School District
Form 471 Application Number	321819	
Funding Request Number	856961	Cellular Service
Services Ordered	Internal Connections	
Pre-Discount Amount	\$66,708.72	
SPIN	143006742	Sprint Spectrum LP/Phillieco
FCDL	March 10, 2003	
Funding Year 2002	07/01/2002 – 06/30/2003	
Funding Commitment Decision	Bidding Violation: Documentation provided demonstrates that price was not the primary factor in selecting this service provider's proposal.	

FROM: Cleveland Municipal School District

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INTRODUCTION

The Cleveland Municipal School District, f.k.a. the Cleveland City School District, ("District", "CMSD") requests the Schools and Libraries Division (SLD) of the Universal Services Administrative Corporation

(USAC) to review the SLD Funding Commitment Decisions regarding Funding Request Numbers 857252 and 856961, both requested in Form 471 Application Number 321819. The SLD based the denials on alleged bidding violations, explaining that the documentation provided demonstrated that price was not the primary factor in selecting this service provider's proposal.

BACKGROUND

The District took special efforts to encourage vendor competition sending email notices to more than sixty vendors with facsimile notices and targeted advertisement placement to additional vendors. Despite those efforts, the District received only two proposals in response to the paging service RFP and three proposals for the cellular service RFP. Although the two responses to the Request for Proposal (RFP) for a paging service were only One Dollar (\$1.00) apart in pricing, Arch Wireless, Inc. was evaluated to be the most responsive. The Ameritech/SBC proposal would have required additional expense to purchase Ameritech proprietary pagers, making the true cost of Ameritech's service approximately Twenty-three Thousand Dollars (\$23,000.00) more than Arch's proposal.

Three service providers responded to the District's Request for Proposal (RFP) for cellular service for eligible District users. AllTel's bid ranged from two thousand dollars (\$2000.00) less than Sprint's to almost twice (\$126,000.00) the cost of Sprint's proposal. The Alltel bid was judged to be not responsive because it contained too many varied additional charges for features, such as long distance and roaming, making price evaluation difficult. Cingular's bid based its pricing solely on Cingular-to-Cingular service. Since there are District departments that use cellular telephones from other service providers, Cingular's proposal was also deemed non-responsive. The third bid was from the current service provider, Sprint, whose cost was evaluated to be reasonable, and whose specifications were the most responsive and responsible to District needs.

BASIS OF APPEAL

The District respectfully submits that the SLD's initial denials of Funding Request Numbers 857252 and 856961 was based on invalid assumptions since there is no information in the funding request file invalidating the District's contention that the District, in following the competitive bidding process set forth in District policy and Ohio law, selected Arch Wireless, Inc and Sprint as the most responsive, cost effective bidders to provide paging and cellular services respectively. However, the District attaches to this appeal letter certain internal District documents (detailed below) to support its appeal.

During the 2002 Performance Integrity Assurance (PIA) process, the SLD did not question, nor request documents regarding, the evaluation of price during the bidding process. While materials and documents were provided to the SLD under the Selective Review Information Request for FY2002, the Selective Review did not include specific questions regarding pricing. Accordingly, the District did not forward internal documents, such as emails and the District purchasing policy, as price priority is standard procedure for all school districts governed by Ohio law. The following documents describe District policy governing procurement, refer to discussions among District bid evaluators regarding proposed project costs, and provide supporting information in order to supplement the District's previous submittals and clarify ambiguities.⁶

OHIO LAW AND DISTRICT POLICIES AND REGULATIONS MANDATE THAT THE DISTRICT CONSIDER PRICE AS A PRIMARY FACTOR, CONSISTENT WITH FEDERAL REGULATIONS

The District is required, by both Ohio statutory law and by its own policies and regulations, to consider lowest price as a primary criterion for any purchase of goods or services, other than those services included under the definition of professional services such as architects or attorneys.

Pursuant to Ohio Revised Code Section 3311.75(B), the Board of Education of any municipal school district in Ohio must "adopt and follow procedures for the award of all contracts for supplies and services involving the expenditure of fifty thousand dollars or more in any one fiscal year after a competitive bid

⁶ The documents include: OHIO REV. CODE § 3311.75, CLEVELAND MUNICIPAL SCHOOL DISTRICT SEALED BID PROCEDURE, various contemporaneous emails and meeting notes, and spreadsheets developed as part of the evaluation process.

or request for proposal process." Although this section does except certain specific categories of contracts, maintenance of the District's internal connections is not within any of those exceptions. See Attachment A, Ohio Revised Code Section 3311.75.

Even if state law allowed an exception for this contract from the competitive bidding process, the policies adopted by the District's Board of Education, and the regulations promulgated by the District's purchasing department pursuant to those policies, make no such exception. Although state law requires competitive bidding procedures for contracts in excess of fifty thousand dollars, the District's policy is more stringent, imposing the competitive bidding process on all procurement in excess of twenty-five thousand dollars, or for consulting services in excess of ten thousand dollars. See Attachment B, Sealed Bid Procedure, at 28 (General Information).

The District's regulation of the procurement process includes multiple levels to assure low price is a primary consideration. Upon bid opening, the District's Director of Purchasing is responsible for making an initial evaluation of all bids. Based upon that evaluation, the District may reject all bids submitted if the Director of Purchasing determines that all bids include excessive prices. See *id.* at 34. Once the District's Purchasing Director has determined that responsive and responsible bids have been received, the Bid Evaluation process requires determination of the lowest responsible bid. See *id.* Purchasing Regulations state that "the award will be made to the lowest responsible bidder whose bid is most advantageous to the District." *Id.* The District respectfully submits that, although its documentation did not include a copy of its internal policy for bid evaluation, the SLD should have relied upon the existence of state and local procurement rules and practices, because such rules will generally consider cost to be a primary factor in order to select the most cost-effective bid.

ADDITIONAL SUPPORTING DOCUMENTS FOR APPEAL (Not forwarded to the SLD previously)

There is no evidence to support a determination that price was not the primary factor in selecting Arch's and Sprint's proposals for FRNs 857252 and 856961. Absent some evidence to the contrary, the District is entitled to an assumption that its local procedures and its incentive to minimize its own undiscounted share are sufficient to conclude the District has selected the most cost-effective bid for services.⁷

Price was a primary and dominant consideration for the District in evaluating proposals/bids and in making the final service provider selections. In an initial e-mail communication from the District's E-Rate manager, Ilze K. Lacis, on October 22, 2001, to her supervisors and two key MIS staff (Chief Information and Research Officer Peter A. Robertson, Interim MIS Executive Director Mark Hogan, the MIS operations director and MIS manager), Ms. Lacis states "...Price is a dominant consideration." In the same e-mail, at point number (3), Ms. Lacis again emphasized that, "The selection criteria (for the bid evaluations) is weighted with price as the dominant, but not exclusive factor." See Attachment C, email from Ilze K. Lacis dated October 22, 2001.

A day later, October 23, 2001, the chief research and information officer forwarded the same e-mail to the District's Technology Steering Committee as an agenda item for the Committee's weekly meeting, stating "the goal is to do it (the E-Rate process) right!" The intent was to inform and educate broad District sectors about E-Rate regulations and requirements. See Attachment D, email from Peter A. Robertson dated October 23, 2001.

At two broad-based brainstorming and planning sessions on October 29, 2001 and on November 7, 2001, the E-Rate manager explained pertinent information about the District's participation in the E-Rate program. At the outset of the meeting, "[p]articular attention was given to full and complete compliance with District, State and FCC/E-Rate rules and regulations for a strong and open bidding process," (Attachment F) including evaluation criteria with cost carrying the heaviest weight among the criteria. Cross-departmental District decision-makers and external participants from key academic, university, educational and civic non-profit institutions and organizations participated in the meeting. One of the principal reasons for the sessions was to develop a clear, accurate, E-Rate-compliant process for the

⁷ See *In re Tennessee Dept. of Educ.*, 14 FCC Rcd. 13734, 13739 (1999).

District's funding requests from the SLD.⁸ See Attachment E, dated October 26, 2001, and Attachment F, dated December 12, 2001.

A section of the Request for Proposal (RFP) document asked vendors to supply information or actions that the District could take to lessen the financial cost. Proposal evaluators reviewed this proposal section, and queried vendors in the evaluation/proposal presentation sessions regarding cost. See Attachment G, Request for Proposal.

The District's E-Rate office prepared a series of spreadsheets listing submitted proposals for the RFPs. The spreadsheets were used at proposal evaluation sessions to help evaluate the bids. The spreadsheet layout demonstrates that cost was a dominant and primary criterion for the discussions. It is obvious that the spreadsheets' essential and primary function was to guide evaluators regarding bidders' proposal costs, both overall and how the District's required percentage payment impacts the District's budget. Evaluators, of course, also considered other factors, such as technological merit, integration into existing infrastructure, and other criteria. The spreadsheets noted here were internal, working documents, and as such, were not forwarded to the SLD in the Selective Review process. For an example, see Attachment H, Spreadsheet for Evaluation.

Furthermore, Interim Executive Director Mark Hogan addressed the issue in an email, dated January 7, 2002, referencing evaluations for network cabling and network maintenance. The emailed notes specifically refer to cost, using percentages to illustrate differentials. See Attachment I, email from Mark Hogan dated January 7, 2002.

Attachments A, B, C, D, E, F, G, H, and I are incorporated by this reference as though fully rewritten here.

OTHER SUPPORTING INFORMATION


The District offered a bidders' conference concurrently with the posting of the RFPs. In the general remarks, the District informed the vendors regarding proposal evaluation criteria. Vendors were pointed to the SLD Web site and the location for the SLD's description about the Form 470 fair and competitive process⁹. At that time all potential service providers were informed that cost was a primary consideration for the District.

CONCLUSION

The District respectfully contends that the above documents fully support that the Cleveland Municipal School District complied with the Schools and Libraries Division bidding requirements and in particular demonstrate that price was a primary factor in selecting a service provider's proposal. The District is presumed, by following appropriate local statutes, policies, and regulations, to have selected the most cost-effective service provider. Ohio statutes and District policy and regulations formulated under them require District administrators to consider price as a primary factor in the award of contracts for goods and services. The documents were not forwarded to the SLD during the PIA and Selective Review process since the specific question regarding the primacy of pricing in the evaluations was not addressed in the SLD's requests for information. Without such specific requests, the District assumed the SLD understood the fundamental legal requirements for school district purchasing under Ohio law.

The District further notes that, while its procurement practices require the determination and selection of the lowest responsible bid, the District received one, and only one, responsible bid for the services referenced in this appeal. As such, there can be no basis for the SLD to conclude "that price was not the primary factor for selecting this service provider's proposal."

Respectfully submitted,


Peter A. Robertson

⁸ See also Other Supporting Information, below.

⁹ <http://www.sl.universalservice.org/whatsnew/reminders-F470.asp#F470R2>

Department of Research & Information

4966 Woodland Avenue, Cleveland, Ohio 44104 • 216-432-6240 • Fax 216-432-4632 • www.cmsdnet.net

SLD Funding Denials/FY 2002-2003

8 May 2003

TO: Letter of Appeal
Schools and Libraries Division
Universal Services Administrative Corporation
Box 125 – Correspondence Unit
80 South Jefferson Road
Whippany, NJ 07981

RE: Letter of Appeal for Two Funding Commitment Denials for FY 2002

Billed Entity Number	129482	Cleveland City School District
Form 471 Application Number	323152	
Funding Request Number	864964	Digital Wireless Broadcast Network
Services Ordered	Internal Connections	
Pre-Discount Amount	\$2,725,000.00	
SPIN	143024681	Media, Inc. dba WVIZ/PBS
FCDL	March 10, 2003	
Funding Year 2002	07/01/2002 – 06/30/2003	
Funding Commitment Decision	Bidding Violation: Documentation provided demonstrates that price was not the primary factor in selecting this service provider's proposal.	

Billed Entity Number	129482	Cleveland City School District
Form 471 Application Number	323210	
Funding Request Number	865736	Wireless LANs
Services Ordered	Internal Connections	
Pre-Discount Amount	\$7,350,183.00	
SPIN	143005607	IBM Corporation
FCDL	March 10, 2003	
Funding Year 2002	07/01/2002 – 06/30/2003	
Funding Commitment Decision	Bidding Violation: Documentation provided demonstrates that price was not the primary factor in selecting this service provider's proposal.	

FROM: Cleveland Municipal School District
Peter A Robertson, Chief Research and Information Officer
1380 East 6th Street
Cleveland Ohio 44114

ERate Contact: Ilze K. Lacis
4966 Woodland Avenue
Cleveland, OH 44104
Tel: 216 432 6240
Fax: 216 432-4632
Lacisil@cmsdnet.net

INTRODUCTION

The Cleveland Municipal School District, f.k.a. the Cleveland City School District, ("District", "CMSD") requests the Schools and Libraries Division (SLD) of the Universal Services Administrative Corporation (USAC) to review the SLD Funding Commitment Decision regarding Funding Request Number ("FRN") 865736 requested in Form 471 Application Number 323210 and Funding Request Number 864964 requested in Form 471 Application Number 323152. The SLD based the denial on alleged bidding violations, explaining that the documentation provided demonstrated that price was not the primary factor in selecting these service providers' proposals.

BACKGROUND

The two Funding Requests (865736 and 864964) appeals presented here are related within the District's Technology Plan and have the potential to significantly affect the District's ten-year, One Billion Dollar facilities renovation project, which is a cooperative venture with the State of Ohio. Some District schools will be replaced while others substantively renovated; each of the District's One Hundred Twenty schools will be affected. Both these FRNs would fund technology to help the classroom teacher and District instructional support staff to continue classroom and curriculum tasks without interruption during renovation and rebuilding.

The District's initial plans for wireless LAN (WiLAN) installations at the District's instructional sites began with a pilot installation at three sites in E-Rate Year 3 (Fiscal Year 2000-01), followed by the SLD's approval of a more extensive installation of 12 WiLAN's at each of four elementary, middle, and high schools in E-Rate Year 4 (Fiscal Year 2001-02). FY 2002-2003 instructional technology plans called for expanded WiLAN installation to all District instructional sites. The WiLAN's enable teachers to continue using technology in the classroom during periods of renovation, when wired connectivity may be disrupted.

FRN 865736 requests wireless Local Area Network (LAN) installations at eligible District instructional sites, whereas FRN 864964 requests a wireless digital District-wide network that provides CMSD digital wireless transmissions with equitable bandwidth for video and data at all eligible District sites. The District took special efforts to encourage vendor competition for all Requests for Proposal (RFP) sending email notices to more than sixty vendors, and forwarding facsimile messages and placing targeted advertisement to additional vendors.

Despite those efforts, the District received only one response for the wireless digital District-wide network RFP, but five respondents for the wireless LAN RFP. The lone respondent to the wireless digital District-wide network was Media, Inc dba WVIZ/PBS, and thus Media, Inc. was of necessity the lowest priced bidder. Of the five service providers who submitted bids for the wireless LAN RFP, the lowest-priced bid was from Apple Professional Services, Inc. (Apple). While the Apple proposal was the least costly, it was deficient in specifications and deliverables and relied upon proprietary equipment. The District wishes to avoid proprietary branding to avoid eliminating technologically viable options for future expansion or upgrade, and to avoid the possible trap of price increases based on sole or limited sources for proprietary equipment. A teleconferenced presentation of the proposal did not provide the detail or assurances the District required to fulfill the RFP's requirements. Therefore, the Apple bid, although apparently the lowest, was determined to be unresponsive to the bid specifications.

The Ameritech/SBC and Smart Solutions proposals were also lower-end bids, but each lacked specification details, and neither included an accounting of all of the expenditures needed for a fully functional wireless LAN throughout each of the District's instructional sites to avoid "dead" transmission locations. The Wireless Information Networks, Inc. proposal was twice the cost of the IBM proposal. Thus, although it was responsive and responsible, the Wireless Information Networks proposal was eliminated based on excessive price. Consequently, the IBM proposal, which fully incorporated the RFP's specifications, was deemed by the evaluating committee to be the most responsive and responsible proposal.

BASIS OF APPEAL

The District respectfully submits that the SLD's initial denials of Funding Request Numbers 865736 and 864964 were based on invalid assumptions since there is no information in the funding request file

invalidating the District's contention that the District, in following the competitive bidding process set forth in District policy and Ohio law, selected Media, Inc dba WVIZ/PBS and IBM as the most responsive, cost effective bidders to provide the services requested in the respective RFPs. However, the District attaches to this appeal letter certain internal District documents (detailed below) to support its appeal.

During the 2002 Performance Integrity Assurance (PIA) process, the SLD did not question, nor request documents regarding, the evaluation of price during the bidding process. While materials and documents were provided to the SLD under the Selective Review Information Request for FY2002, the Selective Review did not include specific questions regarding pricing. Accordingly, the District did not forward internal documents, such as emails and the District purchasing policy, as price priority is standard procedure for all school districts governed by Ohio law. The following documents describe District policy governing procurement, refer to discussions among District bid evaluators regarding proposed project costs, and provide supporting information in order to supplement the District's previous submittals and clarify ambiguities.¹⁰

OHIO LAW AND DISTRICT POLICIES AND REGULATIONS MANDATE THAT THE DISTRICT CONSIDER PRICE AS A PRIMARY FACTOR, CONSISTENT WITH FEDERAL REGULATIONS

The District is required, by both Ohio statutory law and by its own policies and regulations, to consider lowest price as a primary criterion for any purchase of goods or services, other than those services included under the definition of professional services such as architects or attorneys.

Pursuant to Ohio Revised Code Section 3311.75(B), the Board of Education of any municipal school district in Ohio must "adopt and follow procedures for the award of all contracts for supplies and services involving the expenditure of fifty thousand dollars or more in any one fiscal year after a competitive bid or request for proposal process." Although this section does except certain specific categories of contracts, maintenance of the District's internal connections is not within any of those exceptions. See Attachment A, Ohio Revised Code Section 3311.75.

Even if state law allowed an exception for this contract from the competitive bidding process, the policies adopted by the District's Board of Education, and the regulations promulgated by the District's purchasing department pursuant to those policies, make no such exception. Although state law requires competitive bidding procedures for contracts in excess of fifty thousand dollars, the District's policy is more stringent, imposing the competitive bidding process on all procurement in excess of twenty-five thousand dollars, or for consulting services in excess of ten thousand dollars. See Attachment B, Sealed Bid Procedure, at 28 (General Information).

The District's regulation of the procurement process includes multiple levels to assure low price is a primary consideration. Upon bid opening, the District's Director of Purchasing is responsible for making an initial evaluation of all bids. Based upon that evaluation, the District may reject all bids submitted if the Director of Purchasing determines that all bids include excessive prices. See *id.* at 34. Once the District's Purchasing Director has determined that responsive and responsible bids have been received, the Bid Evaluation process requires determination of the lowest responsible bid. See *id.* Purchasing Regulations state that "the award will be made to the lowest responsible bidder whose bid is most advantageous to the District." *Id.* The District respectfully submits that, although its documentation did not include a copy of its internal policy for bid evaluation, the SLD should have relied upon the existence of state and local procurement rules and practices, because such rules will generally consider cost to be a primary factor in order to select the most cost-effective bid.

ADDITIONAL SUPPORTING DOCUMENTS FOR APPEAL (Not forwarded to the SLD previously)

There is no evidence to support a determination that price was not the primary factor in selecting Media, Inc.'s and IBM's proposals for FRN's 864964 and 865736 respectively. Absent some evidence to the

¹⁰ The documents include: OHIO REV. CODE § 3311.75, CLEVELAND MUNICIPAL SCHOOL DISTRICT SEALED BID PROCEDURE, various contemporaneous emails and meeting notes, and spreadsheets developed as part of the evaluation process.

contrary, the District is entitled to an assumption that its local procedures and its incentive to minimize its own undiscounted share are sufficient to conclude the District has selected the most cost-effective bid for services.¹¹

Price was a primary and dominant consideration for the District in evaluating proposals/bids and in making the final service provider selections. In an initial e-mail communication from the District's E-Rate manager, Ilze K. Lacis, on October 22, 2001, to her supervisors and two key MIS staff (Chief Information and Research Officer Peter A. Robertson, Interim MIS Executive Director Mark Hogan, the MIS operations director and MIS manager), Ms. Lacis states "...Price is a dominant consideration." In the same e-mail, at point number (3), Ms. Lacis again emphasized that, "The selection criteria (for the bid evaluations) is weighted with price as the dominant, but not exclusive factor." See Attachment C, email from Ilze K. Lacis dated October 22, 2001.

A day later, October 23, 2001, the chief research and information officer forwarded the same e-mail to the District's Technology Steering Committee as an agenda item for the Committee's weekly meeting, stating "the goal is to do it (the E-Rate process) right!" The intent was to inform and educate broad District sectors about E-Rate regulations and requirements. See Attachment D, email from Peter A. Robertson dated October 23, 2001.

At two broad-based brainstorming and planning sessions on October 29, 2001 and on November 7, 2001, the E-Rate manager explained pertinent information about the District's participation in the E-Rate program. At the outset of the meeting, "[p]articular attention was given to full and complete compliance with District, State and FCC/E-Rate rules and regulations for a strong and open bidding process," (Attachment F) including evaluation criteria with cost carrying the heaviest weight among the criteria. Cross-departmental District decision-makers and external participants from key academic, university, educational and civic non-profit institutions and organizations participated in the meeting. One of the principal reasons for the sessions was to develop a clear, accurate, E-Rate-compliant process for the District's funding requests from the SLD.¹² See Attachment E, dated October 26, 2001, and Attachment F, dated December 12, 2001.

A section of the Request for Proposal (RFP) document asked vendors to supply information or actions that the District could take to lessen the financial cost. Proposal evaluators reviewed this proposal section, and queried vendors in the evaluation/proposal presentation sessions regarding cost. See Attachment G, Request for Proposal.

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¹¹ See *in re Tennessee Dept. of Educ.*, 14 FCC Rcd. 13734, 13739 (1999).

¹² See also Other Supporting Information, below.